

REMARKS

In the Office Action dated April 27, 2005, claims 6-10 and 21-22 are pending and under examination. The Examiner has objected to the priority claim of the present application. The Examiner has also rejected claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph for allegedly containing subject matter not described in the specification as originally filed. Further, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §102(b) as allegedly anticipated by AN: Q92843 (GenBank), and by AN: P70345 (GenBank), respectively. Moreover, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 6,812,339.

This Response addresses each of the Examiner's objections and rejections. Applicants therefore respectfully submit that the present application is in condition for allowance. Favorable consideration of all pending claims is therefore respectfully requested.

In the Action, the Examiner alleges that the Amendment filed on May 6, 2004, which modified the amino acid sequences of SEQ ID NO: 7 and SEQ ID NO: 9, is not supported by the specification or the priority documents, U.S. Serial No. 09/155,327 (the parent application) and Australian Provisional Application PN8965 (filed on March 27, 1996). In particular, the Examiner alleges that Applicants did not identify where the support for the intended corrections of SEQ ID NO: 7 and SEQ ID NO: 9 is found in the specification. In addition, the Examiner observes that according to the specification, SEQ ID NOS: 7 and 9 are encoded by SEQ ID NOS: 6 and 8, respectively. The Examiner indicates that the current sequences of SEQ ID NOS: 7 and 9 are inconsistent with the amino acid sequences that would be encoded by SEQ ID NOS: 6 and 8, respectively. The Examiner concludes that with respect to SEQ ID NO: 7 and SEQ ID NO: 9, Applicants are not entitled to the benefit of an earlier filing date under 35 U.S.C. §119 and §120,

and are only entitled to May 6, 2004, the date on which the current versions of SEQ ID NO: 7 and 9 were filed. For the same reason, the Examiner has rejected claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph for allegedly containing subject matter (SEQ ID NOS: 7 and 9) not described in the specification as filed.

In response, Applicants respectfully submit that the current versions of SEQ ID NO: 7 and SEQ ID NO: 9 were presented to the Examiner in the Preliminary Amendment dated August 9, 2001. In that Preliminary Amendment, Applicants provided a substitute Sequence Listing and explained that Applicants corrected certain clerical errors in SEQ ID NOS: 6, 7, 8 and 9.

Applicants also identified support in the present specification and in the priority document PN8965 for the corrected sequences. However, in the Office Action dated November 3, 2003, the Examiner objected to the corrections in SEQ ID NOS: 6 and 8, and required Applicants to withdraw the changes made to SEQ ID NOS: 6 and 8. In that same Office Action, the Examiner did not object to or comment on the corrections made to SEQ ID NO: 7 or SEQ ID NO: 9. In the response filed May 6, 2004, Applicants withdrew the changes previously made to SEQ ID NOS: 6 and 8. It was Applicants' understanding that the corrections to SEQ ID NOS: 7 and 9, which were presented in the Preliminary Amendment dated August 9, 2001, were accepted by the Examiner. Therefore, contrary to the Examiner's contention, Applicants did not introduce any further modification to SEQ ID NO: 7 or SEQ ID NO: 9 in the Amendment dated May 6, 2004.

With respect to the basis for the corrected SEQ ID NOS: 7 and 9, Applicants identified the relevant support in the present specification by way of the Preliminary Amendment filed on August 9, 2001. That is, the correct versions of SEQ ID NOS: 7 and 9 are disclosed in Figure 1 and Figure 8 as originally filed in the present application and in the parent case (U.S. Serial No. 09/155,327), as well as in the priority documents, PCT/AU97/00199 and PN8965.

As a courtesy to the Examiner, Applicants provide herewith side-by-side comparisons of SEQ ID NOS: 7 and 9 with Figures 1 and 8, respectively. Specifically, Applicants provide herewith a copy of newly formatted Figure 1 (**Exhibit A**), wherein the sheets Figure 1(i) and Figure 1(ii), as originally filed in the present application on August 9, 2001, are joined at the match line to become one sheet for convenience of comparison. It is respectfully submitted that the content of Figures 1(i)-(ii) is identical with that of Figures 1(i)-(ii) filed in the parent application, with that of Figures 1(i)-(ii) filed in PCT/AU97/00199, and with that of Figure 1 in the priority document PN8965. A side-by-side comparison is provided herewith (**Exhibit B**) to illustrate the identity of the bcl-w sequence in Figure 1 with the current sequence of SEQ ID NO: 9 of record.

Similarly, Applicants provide herewith a copy of newly formatted Figure 8 (**Exhibit C**), wherein the sheets Figure 8(i) through Figure 8(iv), as originally filed in the present application on August 9, 2001, are joined at the match lines to become one sheet for convenience of comparison. It is respectfully submitted that the content of Figures 8(i)-(iv) is identical with that of Figures 8(i)-(iv) filed in the parent application, with that of Figures 8(i)-(iv) filed in PCT/AU97/00199, and with that of Figure 8 in the priority document PN8965. A side-by-side comparison is provided herewith in **Exhibit D** to illustrate the identity of the bcl-w sequence in Figure 8 with the current sequence of SEQ ID NO: 7 of record.

Therefore, Applicants respectfully submit that the current sequences of SEQ ID NO: 7 and SEQ ID NO: 9 are fully supported by the present application filed on August 9, 2001, by the parent application, and by PCT/AU97/00199 and the priority document PN8965. Applicants are therefore entitled to the priority date of PN8965 (i.e., March 27, 1996).

As to the inconsistencies between the codons in SEQ ID NOS: 6 and 8, and the amino acid sequences of SEQ ID NOS: 7 and 9, Applicants respectfully submit that in light of the instant disclosure including Figures 1 and 8, and the disclosure of PCT/AU97/00199 and PN8965, those skilled in the art would recognize that the inconsistencies are results of clerical errors in preparing the Sequence Listing.

In view of the foregoing, it is respectfully submitted that the Examiner's objection to the priority claim of the present application and the rejection of claims 6-10 and 21-22 under 35 U.S.C. §112, first paragraph, are overcome. Withdrawal of the objection and the rejection is therefore respectfully requested.

Claims 6-10 and 21-22 are further rejected under 35 U.S.C. §102(b) as allegedly anticipated by AN: Q92843 (human BCLW, the record of which was created in GenBank on November 1, 1997), and by AN: P70345 (mouse BCLW, the record of which was created in GenBank on November 1, 1997). Claims 6-10 and 21-22 are also rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 6,812,339 (first filed on September 8, 2000, issued on November 2, 2004).

Apparently, the Examiner has raised these rejections on the basis that the sequences of SEQ ID NOS: 7 and 9 are only entitled to the priority date of May 6, 2004. As submitted above, Applicants have established that SEQ ID NOS: 7 and 9 are entitled to the priority date of March 27, 1996. Therefore, the cited references are not prior art relative to the claimed invention. Withdrawal of the rejections under 35 U.S.C. §102(b) and 102(e) is therefore respectfully requested.

In view of the foregoing, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Xiaochun Zhu', written in a cursive style.

Xiaochun Zhu

Registration No. 56,311

Scully, Scott, Murphy & Presser
400 Garden City Plaza-STE 300
Garden City, New York 11530
(516) 742-4343
XZ:ab

Encs.: Exhibits A-D

2/26

3/26

	A	S1			
Bclw	MATPASTPDT	RALVADFGY	KLQKGYVCG	AGPGEGPAAD	PLHQAMRAAG 50
Bclw-Rox	MATPASTPDT	RALVADFGY	KLQKGYVCG	AGPGEGPAAD	PLHQAMRAAG 50
				S2	
Bclw	DEFETRFRRT	FSDLAAQLHV	TPGSAQORET	QVSDELFQGG	PNWGRLVAFF 100
Bclw-Rox	DEFETRFRRT	FSDLAAQLHV	TPGSAQORET	QVSDELFQGG	PNWGRLVAFF 100
			E	S3	
Bclw	VFGAALCAES	VNKEMEPLVG	QVQDWMVAYL	ETRLADWIHS	SGGWAEFTAL 150
Bclw-Rox	VFGAALCAES	VNKEMEPLVG	QVQDWMVAYL	ETRLADWIHS	SGGWAELEATK 150
Bclw	YGDGALEEAR	RLREGNWASV	RTVLTGAVAL	GALVTVGAFK	ASK* 193
Bclw-Rox	ARVREMEEEA	EKLKELQNEV	EKQMNMSPPP	GNAGPVIMSL	EERMEADARS 200
Bclw-Rox	IYVGNVDYGA	TAELEAHFH	GCGSVNRVTI	LCDKFSGHPK	GFAYIEFSDK 250
Bclw-Rox	ESVRTSLALD	ESLFRGRQIK	VIPKRTNRPG	ISTDRGFPR	SRYRARTTNY 300
Bclw-Rox	NSSRSRFYSG	FNSRPRGRIY	RGRARATSWY	SPY*	333

Fig. 1 (i)

Fig. 1 (ii)

SUBSTITUTE SHEET (RULE 26)

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2/26

3/26

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Bclw	A	S1	Met Ala Thr Pro Ala Ser Thr Pro Asp Thr Arg Ala Leu Val Ala Asp
Bclw-Rox	MATPASTEDT RALVADFVGY	KLRQKGIVCG AGPGEGPAAD PLHQAMRAAG	10 15 20 25 30 35 40 45
Bclw	DEFETRFRRT FSDLAALQHV	TPGSAQQRETT QVSDLEFQGG PMGRLVAF	50 55 60 65 70 75 80 85 90 95
Bclw-Rox	DEFETRFRRT FSDLAALQHV	TPGSAQQRETT QVSDLEFQGG PMGRLVAF	100 105 110 115 120 125 130 135 140 145
Bclw	VFGALCAES VNKEMEPLVG	QVQDMNVAYL ETRLADMIHS SGGWAEFTAL	150 155 160 165 170 175 180 185 190 195
Bclw-Rox	VFGALCAES VNKEMEPLVG	QVQDMNVAYL ETRLADMIHS SGGWAEFTAL	200 205 210 215 220 225 230 235 240 245
Bclw	YEDGALAEAR RLREGNWSV	RTVLTCGVAL GALVTGGAFF ASK	250 255 260 265 270 275 280 285 290 295
Bclw-Rox	ARVREMEEEA EKLSLQNEV	EKQNMNSPPP GNAGPVIMSL ESKMEADARS	300 305 310 315 320 325 330 335 340 345
Bclw-Rox	IYGVNDVYGA TAELEAHFH	GCGSVNRVTI LCDKESGHPK GFAYIEFSDK	350 355 360 365 370 375 380 385 390 395
Bclw-Rox	ESVRTSLALD ESLFRGRQIK	VIPKRTNRPG ISTTDGPFPR SRYRARTINY	400 405 410 415 420 425 430 435 440 445
Bclw-Rox	NSSRSRFYSG FNSRPRGRIY	RGRARATSWY SPY	450 455 460 465 470 475 480 485 490 495

Fig. 1 (i)

Fig. 1 (ii)

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13/26

14/26

S1			
Bc12	MAHAGRTGYD NREIYMKYIH YKUSORGVEW	DAGDVGAAPP GAAPAGIFS SQPGHTPHTA	60
Bc1x	MSQS NRELAVDFLS YKLSORGYSW	SQFSOVEENR TEAPGTESE METPSAINGN	54
Bc1w	MATPASAD TRALADFGV YKLSORGYSW	GAGPGE	35
Ced9	D IEGFVDYFT HIRONGMEW		99
Bak		MASG	
Bax		QGPQPRQEC CEPALPSASE EQVAQDTEEV	14
		MDGSGEQPR GGGPTSSEI MKTG	23
		BH1 NH1	
Bc12	ASRDPAVTS PLQTPAAPGA AAGPAL	SPVPPVV HLTHQAGDDESRRYEDAE	113
Bc1x	PSWH.LADSP AVNGATGHSS SLDARE	VIPMAAV KQALREAGHEEFELRYRAESD	107
Bc1w		GPAADPL HQANRAAGLEETFRRTESD	63
Ced9		HEMMEVMGTIFEKNHAENHET	132
Bak		FRSYVFYRHO QEQAEGVAA PADPEMVTLE	
Bax		ALLQG FIQDRAGRMG GEAPEDALDP	
Bik		LQPSSTMGQV GROQALGDDINRRYDSEFOT	95
		VPQDASTKKL SECLRRIGUELDS NMELOR	78
		ACTGDEM	

Fig. 8 (i)

Fig. 8 (ii)

VO 9733971

PCTIAU9700199

VO 9733971

PCTIAU9700199

15/26

16/26

Bak	MLQHBOPTA ENAYEYETATTSLEST.I	NWGRV AEEEGG.V	MCVESVNR	165
Bax	MIAAVD.T DSPREVEFRV AADMESDGNF	NWGRV AEEEGG.A	LCVESVDR	158
		NWGRV AEEVEGA.A	LCAESVNR	114
		QCPSYGLI GLISEGFVA AKMMEV		190
S3		BH2		
Bc12	MSPTDNEAL NMTEYLNHR. LHTWODNGG	MDAEVELYG	FSMRPLF	210
Bc1x	MQVLSRTAA NMATYLNDR. DEFWIQENG	MDTEVELYG	NNAAAES	203
Bc1w	MEPBGQOE NMVALETR. LADWEHSSG	MAETALYGD	GALEEARRLR	163
Ced9	LOGQARNLFV YTSLFIKTRI RNNKEHNR	DDDMT		218
Bak		HTGFLGQYTR FVVDEMLHHC IARWEAQR	VVAALNLM	185
Bax		VPELERTMG HTLDEGRERL LG.WIQDQGG	DDGLLSYFC	166
Bc12		DFSWSLKITL LSLAL.VGAC HTLGAYLGH		239
Bc1x		RKGQERFNRW FLTGMTVAGV ALLLSLFSRK		233
Bc1w		EGNWASVRTV LTGAVALGAL TVGAFFASK		193
Bak		GP ILNVLVVLGV VELGQFVVR	FFKS	211
Bax		TPT WQTTFEVAG VLTASLTW	KMG	192

Fig. 8 (iii)

Fig. 8 (iv)

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13/26

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BC12 MARACRTGND NEEIMKXIH KESORREEM
BC1X MSQS NRELVDFLS KESORREEM
BC1V MATPASAD TELLVADFCV KESORREEM
Ced9 LEGEVVDYFT HRIKONGMEM

DAGDVGAAP GAAPACIFIS SOPGHTPHIA 60
SOFSDVEENR TEAPECTESE METPSAINGN 54
GAGPGE 35
99

BAK MASG
BAX MDGSGEPR GCGPTSSOI MKTG 21

OCPPPPDEC CEPALPASE EQVAQDTEEV 14
MDGSGEPR GCGPTSSOI MKTG 21

BC12 ASRODVARTS PLQTPAPGA ANCPAL
BC1X PSWH LADSP AVNGATCHES SLDARE
BC1V
Ced9

SPVPRVY HLTROAGDORREYEDAE 113
VIPMAAY KQALRENGDESELYRRAED 107
GPAADPL HQALRENGDESELYRRAED 63
HEMMEVGTIEMERHAENET 112

BAK FRSYVFRHQ QEQEACVVA PADRENVTC
BAX ALLLOG FIDDPAGRMG GEAREDALDR
B1K

LQPSSTNGOV GROBALRENDINREYDSCOT 95
VPDASTKEL SECEPREGDELOS NMEIDR 78

BC12 MSROCHUTTE FTNROGSAIT VEELEBRD V
BC1X LISOCHUTTE CTNROGSAIT VEELEBRD V
BC1V LISOCHUTTE CTNROGSAIT VEELEBRD V
Ced9 FCEQELAVE RISISCUIDY VRTVGNACOT

HEMMEVGTIEMERHAENET 113
VIPMAAY KQALRENGDESELYRRAED 107
GPAADPL HQALRENGDESELYRRAED 63
HEMMEVGTIEMERHAENET 112

Fig. 8 (i)

Fig. 8 (ii)

Met Ala Thr Pro Ala Ser Ala Pro Asp Thr Arg Ala Leu Val Ala Asp
Phe Val Gly Tyr Lys Leu Arg Gln Lys Gly Tyr Val Cys Gly Ala Gly
Pro Gly Glu 35
<400> 7
Gly Pro Ala Ala Asp Pro Leu His Gln Ala Met Arg Ala
Ala Gly Asp Glu Phe Glu Thr Arg Phe Arg Arg Thr Phe Ser Asp
Val Ala Gln Leu His Val Thr Pro Gly Ser Ala Gln Gln Arg Phe Thr
Gln Val Ser Asp Glu Leu Phe Gln Gly Gly Pro Asn Trp Gly Arg Leu
Val Ala Phe Phe Val Phe Gly Ala Ala Leu Cys Ala Glu Ser Val Asn
Lys Glu 100

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Fig. 8 (iv)